REMARKS

The Office Action dated September 29, 2004 has been fully considered by the Applicant. In connection therewith, independent Claims 5, 9, 11 and 12 have each been amended. Additionally, new Claim 18 has been added dependent on Claim 9.

The rejection of Claims 5 through 10 and 12, as now amended, under 35 U.S.C. §103(a) as unpatentable over Knedlek (U.S. Patent No. 3,044,878) in view of Menzel (U.S. Patent No. 4,522,041) is respectfully traversed. As now clearly conveyed in independent Claims 5, 9 and 12, the present invention pertains to a dispensing machine and a method of storing, delivering and filling a semi-frozen liquid beverage machine having a bowl which contains a helical auger blade which, in turn, surrounds a cylindrical evaporator wherein the auger blade is used to scrape the semi-frozen beverage. Neither Knedlek, Menzel nor any of the other references provide or suggest this feature. Indeed, Knedlek, Menzel and the other references each pertain to an ice-cream or frozen custard dispenser having a cylindrical storage container with a mixing blade therein. Accordingly, the combination of Knedlek and Menzel, taken together, do not achieve the limitations of Claims 5, 9 and 12.

Additionally, the Examiner's position on page 2 of the Office Action that the delivery tube 35 of Menzel is inherently made of thermally conductive material is not well taken. Menzel (column 4, lines 44-66) refers to a forward-flow line consisting of flexible material. There is no suggestion or teaching in the reference or elsewhere that the delivery tube is thermally conductive. The Examiner is called upon to either support or withdraw this assertion.

The remaining claims are dependent on Claims 5, 9 and 12, contain all of the limitations thereof, and are believed allowable for all of the same reasons.

The rejection of Claim 11, as now amended, under 35 U.S.C. §103(a) over Knedlek in view of Menzel and further in view of Frank is respectfully traversed.

As set forth in detail above, neither Menzel, Knedlek nor Frank disclose a device or a process which includes a bowl to hold the beverage which also contains and surrounds a cylindrical evaporator having a helical auger to scrape ice crystals therefrom.

It is improper to combine references to achieve the invention under consideration unless there is some incentive or suggestion in the references to do so.

The Court of Appeals for the Federal Circuit has repeatedly held that under Section 103, teachings from various references can be combined only if there is some suggestion or incentive to do so. ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F2d 1572, 221 USPQ 929 (CAFC 1984).

> Stated another way:
>
> > It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps...The references themselves must provide some teaching whereby the applicant's combination would have been obvious. In re Gorman, 18 USPQ2d 1885 (CAFC 1991).

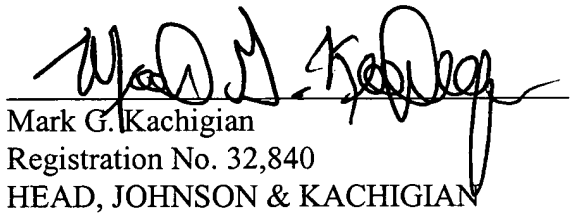
The Examiner is required to follow the law as set forth by the Federal Circuit. In summary, the combination of patents to achieve the claims of the present invention is untenable.

Attention is also directed to added dependent Claim 17 which was unexamined in the Office Action and new dependent Claim 18, both of which are directed to a clear or transparent bowl. Again, neither Knedlek nor Menzel would or even could have this feature. Indeed, Menzel and Knedlek would include a metal, conductive bowl in order to freeze ice cream or frozen custard.

Also enclosed is a check in the amount of $60 for the one-month extension fee.

It is believed that the foregoing is fully responsive to the outstanding Office Action. It is submitted that the application is now in condition for allowance and such action is earnestly solicited. If any further issues remain, a telephone conference with the Examiner is respectfully requested.

Respectfully submitted,



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